I.H.S. Energy, Inc. *and* United Mine Workers of America, Local Union 8217. Case 9–CA–29944

March 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed by United Mine Workers of America, Local Union 8217, the Union, on January 7, 1993, the General Counsel of the National Labor Relations Board issued an order consolidating cases, third consolidated complaint and notice of hearing against I.H.S. Energy, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.[1] Although properly served copies of the charge, amended charge, and third consolidated complaint, the Respondent has failed to file an answer.

On February 16, 1993, the General Counsel filed a Motion for Summary Judgment. On February 18, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all the allegations in the third consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 28, 1993, notified the Respondent that unless an answer was received by close of business February 4, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] Four other matters (a total of seven other cases) were initially consolidated for hearing with Case 9–CA–29944. However, by order of February 9, 1993, the Regional Director for Region 9 severed Case 9–CA–29944 for separate processing.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Gilbert, West Virginia, has been engaged in the mining of coal near Rockhouse, West Virginia. Since commencing its operations about August 22, 1992, the Respondent sold and shipped from its Rockhouse, West Virginia mine goods valued in excess of $50,000 directly to M & H Coal Company, a nonretail enterprise located within the State of West Virginia, which, in turn, annually sells and ships from its West Virginia facilities goods valued in excess of $50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union and its international, United Mine Workers of America, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The employees of the Respondent described in article 1A of the National Bituminous Coal Wage Agreement of 1988 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since about August 22, 1992, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the United Mine Workers of America, on behalf of the Union, which was effective through February 1, 1993. At all times since August 22, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

Since about August 22, 1992, the Respondent has failed to honor the terms and conditions of its collective-bargaining agreement by failing to provide its employees with health insurance coverage as required by the contract and by failing to timely remit dues checked off pursuant to article 15 of the contract. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

About August 20, 1992, the Union, by the filing of a grievance, requested that the Respondent on August 22, 1992, the effective date of the contract, furnish the Union with information relating to the deduction and remittance of dues from the wages of its unit employees and information relating to health insurance coverage and health insurance premium payments for its unit employees. Since about August 22, 1992, the Re-

to the health insurance being provided to its unit employees.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Gilbert, West Virginia, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide our employees represented by United Mine Workers of America, Local Union 8217, in a unit appropriate for collective bargaining as described in paragraph 1A of the National Bituminous Coal Wage Agreement of 1988, with health insurance coverage as required by the contract.

WE WILL NOT fail to timely remit dues checked off pursuant to article 15 of the contract.

WE WILL NOT fail to furnish the Union with information relating to the deduction and remittance of dues from the wages of our unit employees, information relating to health insurance coverage and health insurance premium payments for our unit employees, and information relating to the health insurance being provided to our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of our contract with the Union. WE WILL provide our employees with health insurance coverage as required by the contract and make our employees whole, with interest, for our failure to do so. WE WILL timely remit to the Union the dues checked off pursuant to article 15 of the contract, with interest.

WE WILL furnish the Union with the information it requested relating to the deduction and remittance of dues from the wages of our unit employees, information relating to health insurance coverage and health insurance premium payments for our unit employees, and information relating to the health insurance being provided to our unit employees.

I.H.S. ENERGY, INC.